

**Testimony of Jennifer Hatton  
Staff Attorney, Legal Aid Society of the District of Columbia<sup>1</sup>**

**Before the Committee on Aging and Community Affairs,  
Council of the District of Columbia**

**Public Hearing on the “Fiscal Year 2010 Budget Request Act of 2009”  
Budget for the Office of Human Rights**

**March 30, 2009 – 10:00 A.M.**

**Introduction**

I am here to testify regarding the need for increases to the Office of Human Rights’ (OHR’s) budget for its language access program. The Language Access Act of 2004 (the Act)<sup>2</sup> is one of the most comprehensive and progressive language access laws in the country—and rightly so, as the District is home to a large, diverse immigrant community. Yet, the law is only as good as its implementation. Five years after the law went into effect, limited English proficient (LEP) and non-English proficient (NEP) individuals continue to face barriers in accessing government services.

Legal Aid serves a diverse client population, many of whom speak little or no English. Through our representation of LEP and NEP clients and our work with the DC Language Access Coalition, we have identified several areas in which implementation of the Language Access Act simply cannot be effective without an increase in OHR’s resources.

OHR’s language access program consists of two staff members, and they have accomplished a great deal with the limited resources they have. But, even so, two people cannot be expected to monitor thirty-five agencies’ compliance with the Act, investigate violations arising out of each of these agencies, and educate the community without additional resources. To reduce OHR’s budget for language access oversight by what appears to be the equivalent of two full-time employees, as the Mayor’s budget does, virtually eliminates the program’s capacity to provide oversight—the very thing that the Language Access Act requires them to do. If the District underfunds the program that is charged with enforcement of the Act, then it must pursue legislative reform that will allow for private enforcement mechanisms.

**Language access barriers**

Fundamentally, language access is a matter of equality. Just as the District cannot shut its doors to individuals on the basis of race or gender, neither can it shut out individuals on the

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<sup>1</sup> The Legal Aid Society was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid provides assistance in public benefits, housing, family, and consumer law matters.

<sup>2</sup> The Act requires District agencies to provide free oral interpretation services to all limited English proficient (LEP) and non-English proficient (NEP) District residents and free translation of vital documents for LEP/NEP individuals who speak one of the six prevalent languages.

basis of national origin or, by extension, spoken language. When government services are not language accessible, the results can be devastating. Whether the language access barriers result in a denial of food stamps, a termination of a housing subsidy, a lack of police protection, or a denial of other vital government services, the welfare of the individual and the community is jeopardized.

Even in—no, *especially* in—the midst of an economic crisis, language services should be supported. Investing in language services is not only the right thing to do; it is the fiscally responsible thing to do. Providing an interpreter to assist a Medicaid patient in her medical appointment helps the doctor identify and treat health problems early on, rather than discover them later when they are more serious and more costly to treat. Communicating with LEP or NEP parents about their child who is experiencing challenges at school is necessary to get parents engaged in their child’s education. Providing prompt and high-quality language services to a crime victim is essential for efficient policing and public safety.

Our community needs effective language access enforcement, but this is not possible without substantial resources. I will first address existing challenges to enforcement in order to highlight how budget cuts will exacerbate those challenges.

### **Existing challenges to enforcement**

#### **1. Lack of community education**

Most LEP and NEP individuals are unaware of their rights under the Language Access Act. OHR’s extensive “Know Your Rights” campaign used various media outlets, which surely has helped to educate the community. But, seeing a billboard or hearing a radio announcement, while an important step in knowing your rights, is only the start. Individuals must be empowered to assert those rights.

OHR created “I Speak” cards that both inform individuals of their rights and give them a concrete tool to use when trying to access government services. I have given these cards to my LEP and NEP clients, and they have seen positive results merely by presenting these cards at government agencies. My clients have found that telling an agency employee that you need an interpreter is one thing; showing the employee a card bearing OHR’s name and number and reminding the agency of its legal obligations is another thing entirely.

My concern is that OHR has not been able to put these “I Speak” cards into the hands of community members in any systematic way. Even with the existing resources, OHR simply does not have the capacity to monitor the entire District’s compliance with the Act and enforce the Act, much less conduct extensive community outreach.

#### **2. Underuse of formal complaint procedure**

Although OHR has seen an increase in the number of language access complaints filed in the past year, they have only seen a small fraction of the language access problems that have actually occurred. This is explained by a number of things, including the following:

- (1) First, a lack of education about language access rights among community members means that people are not asserting their rights or complaining when they face barriers.
- (2) Even when individuals know their rights, a continued fear of filing complaints—whether out of generalized mistrust of government or concerns about retribution from an agency that provides much-needed benefits—deters many individuals from reporting language access violations.
- (3) Third, many community-based organizations help individuals resolve language access barriers through informal mechanisms that often go unreported. Once an individual has access to the needed services, he or she has little incentive to file a complaint with OHR.
- (4) Finally, individuals will see little payoff for participating in OHR’s formal complaint procedure from start to finish. When an individual files a language access complaint, she may see a quick resolution to her problem, i.e., receive the needed interpretation or translation, but then lack the time, resources, or the motivation to pursue the complaint further. A months-long investigation’s most optimal outcome is a finding that an agency is in non-compliance. While this is meaningful from a systemic perspective, it does nothing for the harmed individual.

The underuse of the formal complaint procedure is significant for many reasons. Perhaps the biggest reason is that, if the Act cannot be enforced through the complaint mechanism, OHR must devote its limited resources to enforcing the Act through monitoring. Expecting two full-time employees to monitor thirty-five government agencies effectively, however, is unrealistic; reducing OHR’s budget is simply unacceptable.

### 3. Lack of independent monitoring

Because monitoring so many agencies with so few human resources is impossible, OHR relies on the agencies to self-report on a quarterly basis on issues such as the number of LEP and NEP individuals served, the number of phone calls made through Language Line, or the number of community outreach events conducted. Some agencies fail to submit reports at all; others submit reports with incomplete information. Even where a report appears complete on its face, the accuracy of the information is questionable. Because agencies essentially write their own performance evaluations for language access, we can be sure that they have no incentive to provide higher quality language services. Moreover, when the assessment of whether or not an agency is in compliance rests largely on the mere submission of a report, irrespective of its contents, we can be sure that agencies are not making language access a priority.

OHR needs significant resources to devote to an independent monitoring program that would verify that agencies were complying with the Act’s requirements. Without independent monitoring, existing non-compliance will continue and so-called compliance will not be meaningful.

## **FY 2010 Budget items**

### 1. Budget cuts of \$156,000 for language access oversight

As discussed above, effective enforcement cannot happen with the existing resources, let alone reduced resources. The Mayor's proposed budget for language access oversight, which cuts last year's budget by more than half, seems to represent a loss of two full-time equivalents. Given that the language access program currently has only two full-time employees, the budget cut represents a virtual elimination of the program's oversight role.

### 2. Agency performance measures unrealistic without more resources

The agency performance measures outlined in the budget are good goals, but they are not attainable if the budget for language access oversight is cut in half. These performance measures have not been achieved with current resources; they certainly will not be achieved with fewer. Without serious resources and a firm commitment from the Mayor and the Council, the Language Access Act will be a progressive law that accomplishes little.

## **LEP and NEP individuals' need for a private right of action to enforce the Act**

Amending the Act to give individuals who have suffered language access violations the right to sue would create a powerful enforcement mechanism that would advance language access goals regardless of the state of the economy or the size of OHR's oversight budget. And, if the District chooses to drastically underfund OHR's language access program as proposed, then private enforcement mechanisms are needed all the more.

Certainly the goal of language access is that LEP and NEP individuals should have equal access to government services in the first instance. As it stands, though, equal access is still a goal and not yet a reality. For so long as language access oversight remains unsupported financially, agencies will not provide language services as they should. Aggrieved individuals, then, must have the option of asserting their rights through private mechanisms such as a lawsuit.

## **Conclusion**

In sum, the proposed budget marks a drastic regression that deprives an already-strapped agency of resources it critically needs. OHR's language access program does good work that deserves support. But, if the District does not fund systematic community outreach and education and independent monitoring and oversight, it must take legislative steps to provide individuals with alternate remedies. To do otherwise—in a time when individuals may have to rely on government services even more than before—would harm countless individuals and our community at large.